

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2574 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.

2. To be referred to the Reporter or not? Yes.

3. Whether Their Lordships wish to see the fair copy of the judgement? -

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? -

5. Whether it is to be circulated to the Civil Judge?

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RAMESHBHAI MULJIBHAI PARMAR

Versus

STATE OF GUJARAT

Appearance:

MR GI DESAI for Petitioner

MR ST MEHTA, A.G.P. for Respondents.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 08/09/98

ORAL JUDGEMENT

The Training Officer, Pre-Examination Training Centre (SC and ST) recommended the Director, Social Welfare Department, Gujarat State, Ahmedabad by the letter dated 25th March, 1986 for filling up one post of Type Instructor and one post of Steno Inskructor, total two posts. It was stated that in Steno Typing classes

there were vacancies of two clerks and two instructors, out of which the posts of two clerk were allotted to the Collector for appointment from Central Recruitment Scheme, out of which one post of clerk is of 'Advasi' and one post of clerk is of general category. Hence, if the appointment for the post of instructor is given from Harijan or Bakshi panch candidate, then the percentage as per caste or tribe shall be maintained. It was also requested to give appointment to the following two persons.

i. Type Instructor
Shri Parmar Rameshbhai Muljibhai.

ii. Steno Instructor Shri Gohil Ukabhai
Narshiji.

2. The statement showing qualifications, experience and study of the candidates shows that the petitioner was having requisite qualification of S.S.C. examination passed and qualification of type and shorthand, English Type 50 w.p.m. and Gujarat type 25 w.p.m. The petitioner was selected and stood first in selection and he was appointed on totally temporary and ad-hoc basis as a Typing Instructor in the pay scale of Rs. 350-500 in the original scale of Rs. 350/- p.m. from the date Pre-examination Training Centre (Schedule Caste, Schedule Tribe) at Baroda is conducted and he was directed to resume his duties only from the date when the typing class are commenced, by the order date 8-1-1987. He resumed his duties from 11-5-1987 when the classes started. His services remained continued till the date of termination i.e. upto 30-3-1992. The petitioner's services were terminated by the Training Officer, Pre-examiantion Training Centre (SC - ST)) by his order 30th March, 1992. The petitioner was relieved from service with effect from 30-3-1992 and he was directed to be paid his remuneration as typing Instructor from 1-12-90, maximum Rs. 424/- p.m. or as per the days of actual presence of the petitioner (deducting the days of holidays) whichever is less out of these two. The petitioner has challenged this order by means of this writ petition and has prayed for his regularisation from the date of joining his services with all the consequential benefits.

3. This Court by the order dated 11-8-1992 on the basis of the decision of the Supreme Court in the case of Karnataka State Private College Stop-gap Lecturers Association Vs. State of Karnataka and Others reported in AIR 1992 SC 677 passed the interim order directing the respondents to permit the petitioner to resume his duties

as a Typing Instructor and to pay his arrears of salaries as also regular salary when it becomes due. It was further directed that if necessary additional post may be created to accommodate the petitioner. On the basis of the interim order, the petitioner was allowed to resume his duties and still he is working.

4. Learned counsel for the petitioner submitted that the petitioner was selected in the regular selection. On the basis of the Government Resolution dated 26-12-1980 the petitioner after three years service is entitled for regularisation. A copy of that Government Resolution dated 26-12-1980 has been produced at Annexure-C, whereby all the Heads of the Department were directed that they should examine the present arrangement of the ad-hoc temporary employees getting the salary vide Resolution No.PCB-2576-77-M dated 24-3-1976 and for continuing such employees and recommend the propriety of the regularisation of such ad-hoc employees into the regular salaried persons and convert them as such. If such an ad-hoc employee is continued in service for more than three years, then the Heads of the Department shall try to absorb such ad-hoc working employees in permanent posts, subject to the Rules for employing the permanent posts persons and the system thereof and such permanent posts shall be filled in from such employees working on ad-hoc basis. The learned counsel for the petitioner further submitted that the appointment of the petitioner was made subject to availability of any regular employee after selection in due course and the petitioner is still working in the department. Learned counsel for the petitioner relied upon the decision of the Supreme Court in the case of Karnataka State Private College Stop-gap Lecturers Association Vs. State of Karnataka (Supra) wherein the following instructions have been issued.

- i. Services of such temporary teachers who have worked as such for three years, including the break till today shall not be terminated. They shall be absorbed as and when regular vacancies arise.
- ii. If regular selections have been made the Government shall create additional posts to accommodate such selected candidates.
- iii. The teachers who have undergone the process of selection under the directions of the High Court and have not been appointed because of the reservation policy of the Government be regularly

appointed by creating additional posts.

iv. From the date of judgment every temporary teachers shall be paid salary as is admissible to teachers appointed against permanent post.

v. Such teachers shall be continued in service even during vacations.

5. Learned counsel for the petitioner has further relied upon the decision of the learned Single Judge of this Court delivered in Special Civil Application No. 4297 of 1990 decided on 3-2-1993, wherein the petitioner of that case was appointed as a Instructor of Stenography on 11-5-1987 and that appointment was made pursuant to the selection of the petitioner by the Committee consisting of the Social Welfare Officer, Training Officer, SC/ST and Training Officer for Socially and Economically Backward Classes, which was formed by the Director of Social Welfare, respondent no. 2. A copy of rojkam, has been annexed with the Annexure-A. Services of that petitioner were terminated without issuing any show cause notice to him. In the present case also, no such show cause notice has been issued. Learned Single Judge has relied upon the provisions of Rule 33 of the Bombay Civil Services Rules, 1959. In that connection, the Division Bench of this Court in the case of Sub-Divisional Soil Conservation Officer, Idar & Anr. Vs. M.M. Saiyed, reported in 31 (1) G.L.R. 495, held that the employee is entitled to get notice in accordance with Rule 33. In that case also, a similar argument was advanced on behalf of the respondent authorities that the petitioner was not regularly appointed and was also not qualified. In view of the fact that the services were came to be terminated. The Division Bench of this Court held that the order was bad in want of notice and the petitioner was ordered to be reinstated in that case.

6. On the contrary, learned counsel for the State contended that on the basis of the averments made in the affidavit-in-reply that the services of the petitioner were terminated as the petitioner was appointed on temporary and ad-hoc basis. Secondly, the petitioner was not possessing requisite qualification. It was also pointed out that by the Government. Resolution dated 25-5-79 of the Social Welfare and Scheduled Castes Development Department, the post of Typing Instructor was sanctioned with the pay-scale of Rs.1,200/- to Rs. 2,040/- per month. Pursuant to that proposal being sent to the Government letter dated 5-1-1984 was sent to frame

the Recruitment Rules for the said post, which reads as under:-

A. Age - Not above the age of 30 years.

B. Qualifications - Passed S.S.C. or equivalent examination.

Passed G.C.C. Examination.

English typing speed 50 words/mt

Gujarati " 40 "

C. Experience - Three years.

7. It was admitted in the affidavit-in-reply that on the basis of the aforesaid qualifications as per the proposed Recruitment Rules, to fill in the aforesaid post, the name of the candidates from (i) District Backward Class Welfare Officer, Vadodara, (ii) Social Welfare Officer (D.C.), Vadodara and (iii) Employment Exchange Office, Vadodara., were called for vide letter No.SK/TLM/V/Yadi/189/86 dated 6-1-1986. The name of the petitioner was forwarded by the District Backward Community Welfare Officer, Vadodara. The interview for the aforesaid post was held on 17-2-1986, by the District Backward Community Welfare Officer, Vadodara. The petitioner was selected and his name was shown at Sr. No. 1 though it was pointed out that he had no experience but he had requisite qualification. As the petitioner was not having requisite experience and type speed in Gujarati as required under the proposed Recruitment Rules. The petitioner was terminated from service from 30th March, 1992. As the appointment was made on purely temporary and ad-hoc basis petitioner's appointment was not regular because at the time of his appointment he was not possessing requisite qualification as provided under the proposed recruitment rules. Learned Counsel for the State has relied upon the decision of the learned Single Judge of this Court and decision of the Supreme Court in the case of State of Orissa and Another Vs. Pyari Mohan Mishra reported in AIR 1995 SC 974. But in the Supreme Court decision, the appointment of Director was made on ad-hoc basis. That post was only for I.A.S. Officer. The reversion of the Director to the post of Jt. Director without any inquiry was held to be legal and valid. The facts of that case are not attracted to the present case. Learned counsel for the respondent also relied upon the decision of the learned Single Judge of this Court in the case of Dinesh

Shivubha Parmar Vs. State of Gujarat & Ors., reported in 1992 (1) G.L.R. 608, wherein the names of the candidates were called from the Employment Exchange Office and they have been given appointment on temporary and ad-hoc basis and thereafter the appointments were made after due course and the appointment of the petitioner of that case was subject to availability of the regular employees. In the present case, there is no condition for the appointment of the petitioner and service of the petitioner will continue till availability of the regular selected employees. As such, the case law cited by the learned counsel for the State as stated above is not applicable to the facts and circumstances of the present case. According to the allegations made in the affidavit-in-reply, the petitioner was not possessing requisite qualification under the proposed recruitment rules. It appears that there are no rules for recruitment requiring any requisite qualification or experience. It appears that the some proposal has been made for framing recruitment rules otherwise petitioner's appointment would not have made in accordance with the provisions of the Rules. From perusal of the whole affidavit-in-reply, it appears that there is no rule for appointment of Typing Instructor. It appears that the petitioner was selected by the Recruitment Committee and at that time there was no even proposed recruitment rules for recruitment of Typing Instructor. At the relevant time, the petitioner was found fully qualified having requisite qualification cannot be said at later stage after five years that the petitioner was not possessing requisite qualification at the time of his appointment. In view of the directions issued by the Supreme Court in the case of Karnataka Staet Private College Stop-gap Lecturers Association Vs. State of Karnataka and Others (*supra*), even the petitioner's appointment was temporary and on ad-hoc basis, services of the petitioner could not be terminated and he was entitled to be regularised as per the terms of the Government Resolution dated 26-12-1980 after completing three years' service, much before the termination the petitioner had obtained requisite experience in Gujarati type even if it is assumed that it was required under the proposed recruitment rules.

8. Considering the facts and circumstances, as discussed above I am constrained to hold that that termination order dated 30th March, 1992 passed by the Training Officer is illegal and not sustainable in the eye of law. Accordingly, this petition is allowed and the impugned termination order dated 30th March, 1992 is hereby quashed and set aside. The respondents are

directed to treat the petitioner as regular employee from the date of his termination i.e. from 30th March, 1992. The respondents are also directed to give all consequential benefits to the petitioner from that date. Rule is made absolute, with no order as to costs.

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